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I. COURT APPLIES UNINSURED MOTORIST STATUTE

In *Wausau Underwriters Insurance Co. v. Howser*[1] the South Carolina Supreme Court concluded that under the South Carolina uninsured motorist statute,[2] an insurer was liable for gunshot injuries inflicted upon an insured motorist during a vehicular chase by an unknown operator of an unidentified vehicle.[3] The court further held that the presence of an independent witness satisfied the conditions necessary to sue or recover under the uninsured motorist provision, even though the gunshot, rather than actual physical contact with the unknown vehicle, caused the insured's injuries.[4] The court's conclusions directly contradicted an earlier analysis by the South Carolina Federal District Court, which incorrectly assumed that South Carolina courts would prefer a narrow construction of the uninsured motorist statute.[5] The supreme court adopted a three-prong test to determine whether the insured's injuries arose out of the "use" of her assailant's vehicle. The court concluded that the insurer was liable for Howser's injuries because (1) a causal connection existed between the unknown vehicle and Howser's injuries, (2) no act of independent significance occurred to break that causal connection, and (3) the unknown vehicle was used for transportation purposes.[6] The court's articulation of this standard marked a departure from its traditional narrow construction of state statutes and placed South Carolina law on the front lines of the national war between injured motorists and their uninsured motorist policy provisions.

On the night of June 13, 1989, Nancy Reece Howser and one passenger were traveling on a public street when an unknown motorist bumped her vehicle from behind, continued to pursue them, and then bumped her vehicle twice more, at which time Howser accelerated her vehicle. The driver of the other car then positioned his vehicle along the passenger side of Howser's vehicle, pointed a pistol, and yelled at them to stop the car. Howser turned

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1. ___ S.C. ___, 422 S.E.2d 106 (1992) (per curiam).

2. S.C. CODE ANN. § 38-77-140 (Law. Co-op. 1989) (involving injuries "arising out of the ownership, maintenance, or use" of an uninsured vehicle).

3. *Howser*, ___ S.C. at ___, 422 S.E.2d at 108-09.

4. *Id.* at ___, 422 S.E.2d at 109-10.

5. Wausau Underwriters Ins. Co. v. Howser, 727 F. Supp. 999 (D.S.C. 1990), *rev'd*, 978 F.2d 1257 (4th Cir. 1992) (reversing the district court's opinion and certifying two questions to the South Carolina Supreme Court for a determination of South Carolina law). In reaching this assumption, the district court recognized that "the South Carolina Supreme Court has consistently declared that uninsured motorist coverage should not by judicial interpretation be extended beyond the plain intent of the statute." *Howser*, 978 F. Supp. at 1002 (footnote omitted).

6. *Howser*, ___ S.C. at ___, 422 S.E.2d at 108-09.

left onto a side street to avoid the assault. As she completed her turn, the unidentified motorist shot at the rear of her vehicle. One bullet entered the rear of the vehicle, fragmented, pierced Howser's seat, and entered her back in three places. Howser stopped the vehicle and then lost consciousness. Neither the gunman nor his vehicle was ever identified. Howser's injuries resulted solely from the gunshot, and neither Howser nor her passenger was injured from the contact of the two vehicles.[7]

Howser initially filed a "John Doe" action in the Richland County Court of Common Pleas, seeking recovery under the uninsured motorist provision of her father's insurance policy. Wausau Underwriters Insurance Company ("Wausau") then brought an action in South Carolina District Court seeking a declaration that the policy did not cover Howser's injuries.[8] After considering both parties' motions for summary judgment, the district court granted Wausau's motion for summary judgment ruling that Howser's injuries did not arise out of the "use" of an uninsured vehicle,[9] a prerequisite to recovery under South Carolina's uninsured motorist statute.[10]

Howser appealed, and the United States Court of Appeals for the Fourth Circuit certified the following two questions to the South Carolina Supreme Court to determine the correct application of South Carolina law:

> 1. "Is the insurer liable under the uninsured motorist provision involving injuries 'arising out of the ownership, maintenance, or use' of an uninsured vehicle (Section 38-7[7]-140, S.C. Code Ann.) for gunshot injuries sustained by a person traveling on a public highway in an insured vehicle and inflicted during a vehicular chase by an unknown owner or operator of an unidentified vehicle?"
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> 2. "Is, under the circumstances of this case, subsection 2 of Section 38-77-170 ('Conditions to sue or recover under uninsured motorist provision . . .') satisfied by the presence of an independent witness to the accident causing the injury of the defendant in this case, even though the injury was not caused by 'physical contact with the unknown vehicle?'"[11]

The South Carolina Supreme Court responded affirmatively to both questions.[12]

To determine an insurer's liability for gunshot injuries inflicted during a vehicular chase, the South Carolina Supreme Court examined the meaning of

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7. *Howser*, 727 F. Supp. at 1000.
8. *Id.* at 1000-01.
9. *Id.* at 1006.
10. *See* S.C. CODE ANN. § 38-77-140 (Law. Co-op. 1989).
11. *Howser*, ___ S.C. at ___, 422 S.E.2d at 107 (quoting certification of Fourth Circuit).
12. *Id.* at ___, 422 S.E.2d at 107.

the word "use" in South Carolina's uninsured motorist statute.[13] Under South Carolina's uninsured motorist statute, Wausau would be liable for Howser's injuries if her injuries arose out of the "ownership, maintenance, or use" of an uninsured vehicle.[14] Lacking relevant South Carolina case law to assist the court in construing the statute, the court looked to other jurisdictions for a definition of "use" as applied in uninsured motorist policy provisions.[15] The court found the Minnesota Supreme Court's reasoning in *Continental Western Insurance Co. v. Klug*[16] not only persuasive, but precisely on point.[17] The court adopted *Klug*'s three-prong test and held Wausau liable for Howser's injuries.[18] The court first considered whether a causal connection existed between Howser's injuries and her assailant's vehicle.[19] The court stated that "[t]he causation required is something less than proximate cause and something more than the vehicle being the mere site of the injury."[20] The court reasoned that with regard to Howser's injuries, "[t]he gunshot was the culmination of an ongoing assault, in which the vehicle played an essential and integral part."[21] The court further stated "that the unknown vehicle was an active accessory to this assault."[22] Although the gunshot proximately caused Howser's injuries, the court concluded that "a sufficient causal connection exist[ed] between the use of the assailant's vehicle and Howser's injuries."[23]

After establishing the causal connection, the court questioned whether an "act of independent significance" occurred to break the causal link.[24] The court noted that Howser's assailant used his vehicle to pursue Howser and to place himself into a position from which he could shoot her.[25] Stating that

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13. *Id.* at ___, 422 S.E.2d at 108.

14. S.C. CODE ANN. § 38-77-140 (Law Co-op. 1989).

15. *Howser*, ___ S.C. at ___, 422 S.E.2d at 108. The district court had noted that Howser's case was the first in South Carolina in which insurance coverage was "sought for gunshot injuries suffered during a vehicular chase." Wausau Underwriters Ins. Co. v. Howser, 727 F. Supp. 999, 1003 (D.S.C. 1990), *rev'd*, 978 F.2d 1257 (4th Cir. 1992).

16. 415 N.W.2d 876 (Minn. 1987). In *Klug* an identified but uninsured motorist pursued Russel Klug, "rammed" his vehicle, and shot him in the left arm. The Minnesota Supreme Court found Continental Western Insurance Company liable for Klug's injuries because (1) a causal connection existed between Klug's injuries and the use of an uninsured vehicle, (2) no act of independent significance broke that connection, and (3) the uninsured car was used for transportation purposes. *Id.* at 877-79.

17. *Howser*, ___ S.C. at ___, 422 S.E.2d at 108.

18. *Id.* at ___, 422 S.E.2d at 108-09.

19. *Id.* at ___, 422 S.E.2d at 108.

20. *Id.* at ___, 422 S.E.2d at 108 (citing *Klug*, 415 N.W.2d at 878).

21. *Id.* at ___, 422 S.E.2d at 108.

22. *Howser*, ___ S.C. at ___, 422 S.E.2d at 108.

23. *Id.* at ___, 422 S.E.2d at 108.

24. *Id.* at ___, 422 S.E.2d at 108.

25. *Id.* at ___, 422 S.E.2d at 108.

"the unknown driver's use of his vehicle and the shooting were inextricably linked as one continuing assault," the court concluded that no independent act interrupted the causal connection between Howser's injuries and her assailant's use of his vehicle.[26]

The third prong of *Klug*'s analysis limited the use of the uninsured vehicle to the purposes of providing transportation.[27] The court declined to determine whether South Carolina law mandated this requirement.[28] However, the court reasoned that because Howser's assailant used his vehicle to provide transportation, each element of the *Klug* analysis was satisfied.[29] Based on this reasoning, the court concluded that Howser's injuries "arose out of the use of her assailant's vehicle."[30]

Because Howser's assailant was unidentified, the court also needed to determine whether the presence of an independent witness to the accident satisfied South Carolina's statutory requirements to sue or recover under the uninsured motorist provision.[31] South Carolina law currently provides that an insured may recover for injuries inflicted by an unidentified, uninsured motorist if the injury "was caused by physical contact with the unknown vehicle, or the accident . . . [was] witnessed by someone other than the owner or operator of the insured vehicle."[32] The court reasoned that this section of the statute was designed to ensure that "the accident involved a second unknown vehicle."[33] The court recognized the legislature's determination that "an independent witness is sufficient to reduce the possibility of false claims."[34] The court concluded that "no physical contact with the unknown vehicle is necessary when a witness other than the owner or driver of the insured vehicle is available to attest to the facts of the accident."[35]

The *Klug* analysis apparently sets forth an unambiguous standard by which uninsured motorist policy provisions apply to injuries similar to Howser's. However, the articulation of this standard, which concededly

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26. *Id.* at ___, 422 S.E.2d at 109.

27. Continental W. Ins. Co. v. Klug, 415 N.W.2d 876, 878 (Minn. 1987).

28. *Howser*, ___ S.C. at ___ n.2, 422 S.E.2d at 109 n.2. The court stated, "The third prong of the *Klug* analysis requires the use of the vehicle be limited to that of providing transportation. Here the vehicle was being used for transportation. Thus, we need not determine whether this element is mandated under our law." *Id.* Recently, however, the supreme court construed the uninsured motorist provision to limit "use" to transportation uses. Canal Ins. Co. v. Insurance Co. of North America, ___ S.C. ___, 431 S.E.2d 577 (1993).

29. *Howser*, ___ S.C. at ___, 422 S.E.2d at 109.

30. *Id.* at ___, 422 S.E.2d at 109 (footnote omitted).

31. *Id.* at ___, 422 S.E.2d at 109.

32. S.C. CODE ANN. § 38-77-170 (2) (Law. Co-op. 1989 & Supp. 1992).

33. *Howser*, ___ S.C. at ___, 422 S.E.2d at 109 (citing Coker v. Nationwide Ins. Co., 251 S.C. 175, 161 S.E.2d 175 (1968)).

34. *Id.* at ___, 422 S.E.2d at 109.

35. *Id.* at ___, 422 S.E.2d at 110.

"defies a simple test,"[36] has aligned courts nationwide into two distinct camps of legal theory. In virtually every case involving this issue, the courts attempted to define the term "use" by determining the cause of the injury and the role played by the uninsured vehicle in relation thereto. The degree of causation required to establish liability and to ensure recovery for such injuries sharply divides the available case law. Courts adhering to a narrow view of causation hold that injuries caused by gunshots during a vehicular chase do not arise out of the use of an uninsured vehicle.[37] Other courts follow the more expansive view of causation set forth in *Klug* and hold that injuries caused by the use of an uninsured vehicle are covered under uninsured motorists statutes.[38] In *Howser* the South Carolina Supreme Court moved away from the narrow interpretation and towards the more expansive theory. Although *Howser* appears to produce a bright line test to clarify South Carolina's statute, it is helpful to consider (1) the theories of causation the court rejected, (2) what theories the court embraced as fundamental to its decision, and (3) the impact this case will have on recovery available under uninsured motorist provisions both in South Carolina and nationwide.

The United States District Court for the District of South Carolina rendered the first opinion in the *Howser* case.[39] The district court anticipated that the state supreme court would interpret the statute by examining its "plain intent" and looking no farther than the face of the statute.[40] The district court further assumed that under such a narrow construction, the statute required Howser to prove that her assailant's vehicle caused her injury and that the injury arose out of the use of his vehicle.[41] The district court adopted a tough standard which required the causal connection to be "'more than incidental, fortuitous, or but for,'" and that the injury be "'foreseeably identifiable with the *normal* use of a motor vehicle.'"[42] Based on this analysis, the court reasoned that "a shooting injury is not foreseeably identifiable with the normal use of a vehicle."[43] Therefore, the court rejected the broader theory that would have considered the gunman's vehicle an "active accessory" to Howser's assault.[44] Rather, the district court formulated a

36. Continental W. Ins. Co. v. Klug, 415 N.W.2d 876, 877 (Minn. 1987).

37. *E.g.*, Coleman v. Sanford, 521 So. 2d 876 (Miss. 1988). For a list of other cases so holding, see Wausau Underwriters Ins. Co. v. Howser, 727 F. Supp. 999, 1003 nn.6, 7 (D.S.C. 1990), *rev'd*, 978 F.2d 1257 (4th Cir. 1992).

38. *E.g.*, Ganiron v. Hawaii Ins. Guar. Ass'n, 744 P.2d 1210 (Haw. 1987). For a list of other cases so holding, see *Howser*, 727 F. Supp. at 1003 n.6.

39. 727 F. Supp. 999.

40. *Id.* at 1002.

41. *Id.*

42. *Id.* at 1005 (emphasis added) (quoting Detroit Auto. Inter-Ins. Exch. v. Higginbotham, 290 N.W.2d 414, 419 (Mich. Ct. App. 1980), *quoted in* Nationwide Mut. Ins. Co. v Brown, 779 F.2d 984, 989 (4th Cir. 1985)).

43. *Id.* at 1006 (citing *Brown*, 779 F.2d at 989).

44. *Howser*, 727 F. Supp. at 1005. The broader theory was developed by the following two

restrictive standard for recovery under the uninsured motorist statute. The court concluded that "Howser's injuries did not arise out of the use of the gunman's automobile as an automobile and that the gunman's vehicle, although it helped him to pursue Howser, did not itself produce her injuries."[45] Accordingly, the court held that section 38-77-140 did not cover Howser's injury.[46]

Although the supreme court abandoned the district court's findings in favor of a more relaxed construction of South Carolina's uninsured motorist statute, strong arguments supporting the district court's conclusions still remain in other jurisdictions. The dissenting opinion of Colorado's Chief Justice Rovira in *Cung La v. State Farm Automobile Insurance Co.*[47] contains one of the most persuasive arguments. Chief Justice Rovira vehemently opposed the Colorado Supreme Court's adoption of a more liberal definition of "use" as applied in uninsured motorists provisions. He argued that the *Cung La* case should have been decided "under the contract principle of examining the meaning and intent of the words in the contractual provision."[48] Chief Justice Rovira favored the acceptance of a general test for causation that would link a vehicle and an injury only if "'the injury was foreseeably identifiable with the normal use, maintenance and ownership of the vehicle.'"[49] Under this test, an uninsured motorist policy would not cover injuries such as those injuries sustained by Howser. Chief Justice Rovira's analysis would prevent Howser's recovery because her injuries resulted from the use of a firearm, not the use of a vehicle.[50] "'Use, *as contemplated by the automobile liability policy*, means use of a vehicle as such, not a use foreign to its inherent

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cases: (1) Nationwide Mut. Ins. Co. v. Munoz, 245 Cal. Rptr. 324 (Ct. App. 1988) (finding coverage existed "because the car in which the gunman was riding was a substantial factor in the shooting death)," and (2) Continental W. Ins. Co. v. Klug, 415 N.W.2d 876 (Minn. 1987) (finding coverage because the gunman's uninsured vehicle was an "active accessory" in the assault).

45. *Howser*, 727 F. Supp. at 1006.

46. *Id.*; *see* S.C. CODE ANN. § 38-77-140 (Law. Co-op. 1989).

47. 830 P.2d 1007 (Colo. 1992) (en banc). In *Cung La* an insured motorist was involved in an altercation with a group of gang members. A week later, one of the gang members shot the insured while driving on a highway. The assailant's vehicle was one of three cars used to block the victim's car into the right lane. The victim sustained a gunshot wound to the head, lost control of the car, and was struck by a third vehicle. The insured motorist claimed injuries from both the gunshot wound and the resulting collision. The supreme court held that the insured was entitled to have the merits of his claim heard and reversed the grant of summary judgment for the insurer. *Id.* at 1012-13.

48. *Id.* at 1017 (Rovira, C.J., dissenting) (citing Titan Constr. Co. v. Nolf, 515 P.2d 1123, 1126 (Colo. 1973) (en banc)).

49. *Id.* at 1014 (quoting 1 IRVIN E. SCHERMER, AUTOMOBILE LIABILITY INSURANCE, at 2-7 (2d ed. rev. 1993)).

50. *See id.* at 1017 (discussing lack of automobile insurance coverage for firearm injuries sustained by an insured while in a motor vehicle).

purpose, to which the vehicle might conceivably be put.'"[51] Chief Justice Rovira noted that in cases in which

> the injuries do not bear any "apparent relation to the operation of the vehicle or to the use to which it was being put" but instead result "from a deliberate assault which took place in a vehicle simply because that is where the [victims] happened to be when the assailant came 'gunning' for [them]," there is insufficient causal connection between the use of the vehicle and the injury.[52]

Ultimately, Chief Justice Rovira reached a conclusion similar to the district court's decision in *Howser* and advocated that "an analysis that requires a causal relationship between the injury and the use of the automobile and a use contemplated by the policy" is the best test for determining whether an injured party may recover under an uninsured motorist provision.[53] Accordingly, although Howser's assailant "used" his vehicle to pursue Howser and to place himself into a position from which he could shoot her, Howser's injuries remained unrelated to the gunman's use of his vehicle for transportation purposes.

Both the district court in *Howser* and Chief Justice Rovira's dissent in *Cung La* favor a more limited determination of causation that renders proof that an injury arose out of the "use" of a vehicle more difficult. These opinions, along with others employing a similar analysis, adhere to the old-fashioned rules of narrowly construing the terms of statutes and policy provisions. By requiring (1) that uninsured vehicle cause the insured's injury and (2) that the injury result from a normal use of the vehicle as contemplated by either statute or policy, the reasoning illustrated by these cases virtually eliminates recovery for *Howser*-type injuries in all instances, unless the injury results from direct physical contact with an uninsured vehicle used for transportation purposes. Uninsured motorist carriers strongly favor such conclusions because they forsake the established rule requiring strict construction of insurance policies against the insurer. However, these decisions meet sharp opposition from more recent opinions, which loosen the causation requirement allowing recovery without proof of physical contact with an uninsured vehicle or proof of a contemplated "use" of that vehicle.[54]

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51. *Id.* (quoting Azar v. Employers Casualty Co., 495 P.2d 554, 555 (Colo. 1972) (en banc)).

52. *Cung La*, 830 P.2d at 1015 (Rovira, C.J., dissenting) (alteration in original) (quoting Bennett v. National Union Fire Ins. Co., 318 S.E.2d 670, 671 (Ga. Ct. App. 1984)).

53. *Id.* at 1018.

54. *E.g.*, Ruiz v. Farmers Ins. Co., 847 P.2d 111 (Ariz. Ct. App. 1992). In *Ruiz* Angela Ruiz sustained injuries from a gunshot fired from an uninsured vehicle, while traveling as a passenger in an insured vehicle. The Arizona Court of Appeals reversed the grant of summary judgment in favor of the insurance companies. *Id.* at 116. In reaching its conclusion, the court relied on Continental W. Ins. Co. v. Klug, 415 N.W.2d 876 (Minn. 1987). *Id.*

The South Carolina Supreme Court took a bold step in abandoning the district court's theory in favor of the more expansive *Klug* analysis. Although at first glance *Klug*'s three-prong test appears more regimented than the narrower theories, *Klug* actually frees the court to allow recovery under a now broader interpretation of both state statute and uninsured motorist policy provisions.

By rejecting the district court's "foreseeably identifiable use" theory of causation, the court established case law precedent disfavoring insurance companies which face claims under uninsured motorist provisions. South Carolina law mandates that all automobile policies issued in the state provide uninsured motorist protection "to pay the injured all sums which he is legally entitled to recover as damages from the owner or operator of an uninsured motor vehicle."[55] However, the court loosened the standard of causation necessary to prove that the injury arose out of the "use" of an uninsured vehicle. The court's broad definition of "use" is consistent with other jurisdictions which construe "use" as "a general catchall term not limited to the ordinary use of the automobile."[56] Under this interpretation, "[a]ny exercise of control over the vehicle constitutes a use, regardless of its purpose, extent, or duration."[57] Applying this idea specifically to injuries inflicted during a vehicular chase, the court embraced the innovative expansion of statute interpretation initiated in *Klug*. The *Howser* court severely reduced the degree of causation needed to establish that the alleged injury arose out of the use of the vehicle. Consequently, the court found a causal link between Howser's injuries and her assailant's vehicle, even though use of a vehicle for a criminal assault was not "foreseen or expected."[58]

The *Howser* court used this broader perception of causation to tailor a cloak of protection for Howser and other similarly situated claimants seeking recovery under the uninsured motorist statute. The court loosely defined the causation standard as one requiring "something less than proximate cause and something more than the vehicle being the mere site of the injury."[59] The

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55. S.C. CODE. ANN. § 38-77-150 (Law. Co-op. 1989).

56. GEORGE J. COUCH, COUCH CYCLOPEDIA OF INSURANCE LAW § 45:64 (Ronald A. Anderson & Mark S. Rhodes eds., 2d rev. ed. 1981) (footnote omitted).

57. *Id.*

58. *See* Wausau Underwriters Ins. Co. v. Howser, ___ S.C. ___, ___, 422 S.E.2d 106, 108 (1992) (per curiam).

> [I]n determining whether the negligent act that caused a bodily injury arose out of the "use" of a motor vehicle within the coverage of a motor vehicle liability policy, the court must consider whether it was a natural and reasonable incident or consequence of the use of the vehicle for the purposes shown by the declarations, though not foreseen or expected.

COUCH, *supra* note 56, at § 45:56 (footnote omitted).

59. *Howser*, ___ S.C. at ___, 422 S.E.2d at 108 (citing Continental W. Ins. Co. v. Klug, 415 N.W.2d 876 (Minn. 1987)).

court then characterized the use of Howser's assailant's vehicle as an "essential and integral part" of an "ongoing assault."[60] By expanding its theory of causation, the court also expanded the possible uses of an uninsured vehicle which might trigger an insurer's statutory liability. Given this broad reading of "use," it is not surprising that the court found a sufficient causal connection existed between Howser's injuries and her assailant's vehicle.

Nor is it surprising that the court found that "no independent act occurred to break the causal link" between Howser's injuries and her assailant's vehicle.[61] According to the court's analysis, the use of an automobile for a criminal assault would entitle the victim of the assault to recovery under South Carolina's uninsured motorist statute, even though such use is neither normal nor foreseeable. This theory renders it unlikely that a court will find an act of independent significance sufficient to break the causal link because the court incorporated the act causing the injury (the gunshot) into the act of "using" the vehicle (pursuing the victim prior to the assault). Therefore, the court would be unable to find that an "'independent act or intervening cause wholly disassociated from, independent of and remote from the use of the automobile'" caused the injury.[62] The court's broad conception of "use" includes virtually all imaginable independent causes. Thus, the court found it unnecessary to determine whether Howser's assailant used his vehicle for transportation purposes because under the court's analysis, any use of the vehicle was sufficient to establish causation.

Because the court abruptly shifted from a view favoring insurers to one which essentially exposes them to endless liability under uninsured motorists provisions, the court's analysis produces skepticism. However, it remains essential to remember that no middle ground exists between the restrictive and the more expansive approaches to the issues set forth in *Howser*. The *Howser* court did more than jump on the *Klug* bandwagon—it took the lead from Minnesota and brought a loose causation standard into a new realm of litigation. Although it is still too early to make accurate predictions of South Carolina's impact on other jurisdictions, it is clear that the *Klug* analysis impacts the reasoning of courts in other jurisdictions. In *Ruiz v. Farmers Insurance Co.*,[63] decided only two weeks after *Howser*, the Arizona Court of Appeals faced facts almost identical to those found in *Howser*. The *Ruiz* court, like the district court in *Howser* and Chief Justice Rovira in *Cung La*, construed the uninsured motorist statute according to the plain meaning of the language used.[64] However, unlike the South Carolina District Court and

60. *Id.* at ___, 422 S.E.2d at 108.

61. *Id.* at ___, 422 S.E.2d at 109.

62. *Id.* at ___, 422 S.E.2d at 109 (quoting Hite v. Hartford Accident & Indem. Co., 288 S.C. 616, 621, 344 S.E.2d 173, 176-77 (Ct. App. 1986)).

63. 847 P.2d 111 (Ariz. Ct. App. 1992); *see supra* note 54.

64. *Ruiz*, 830 P.2d at 115.

Chief Justice Rovira, the *Ruiz* court found that such a construction would allow a broad definition of "use" as it applied in the statute.[65] The court rejected the narrow theory requiring that the vehicle involved be the proximate cause of the injury.[66] The court of appeals then followed the same analysis of *Klug* that was adopted by South Carolina.[67]

The *Howser* decision clearly placed South Carolina law on the front lines of the battle between insured drivers and the terms of their uninsured motorist policy provisions. By tailoring a causation standard to fit its broad definition of "use," the court opened the possibility for recovery to even more potential claimants. The question then becomes one of degree, for it is speculative at this point just how far the court will go when presented with facts which involve remote links between injuries and the use of the vehicles.

Janice M. Baker

II. MISREPRESENTATIONS IN LIFE INSURANCE POLICIES

In *Carroll v. Jackson National Life Insurance Co.*,[1] the South Carolina Supreme Court addressed a novel insurance issue. In a unanimous opinion written by Justice Toal, the court concluded that when an individual makes material misrepresentations in an application for life insurance and subsequently dies within the two-year contestability period, the insurer may void the policy *ab initio* and thereby avoid liability without having to prove a causal connection between the insured's cause of death and the material misrepresentations.[2] While admitting this was a new issue, the court departed from a history of cases requiring a causal connection between a policy exclusion and loss.[3] In so ruling, South Carolina joined the majority of states that do not demand such a causal link.[4]

The facts of the case were largely undisputed. Mary Louise Carroll, daughter and beneficiary of the decedent, brought an action to recover on two $50,000 life insurance policies issued to her father by the defendant.[5] Jackson

65. *Id.* at 115-16.
66. *Id.* at 116.
67. *Id.*

1. 307 S.C. 267, 414 S.E.2d 777 (1992).
2. *Id.* at 269, 414 S.E.2d at 778.
3. *See* Johnson v. South State Ins. Co., 288 S.C. 239, 341 S.E.2d 793 (1986); South Carolina Ins. Co. v. Collins, 269 S.C. 282, 237 S.E.2d 358 (1977); McGee v. Glove Indem. Co., 173 S.C. 380, 175 S.E. 849 (1934); Reynolds v. Life & Casualty Ins. Co., 166 S.C. 214, 164 S.E. 602 (1932).
4. *Carroll*, 307 S.C. at 270, 414 S.E.2d at 778.
5. Carroll v. Jackson Nat'l Life Ins. Co., 304 S.C. 491, 492, 405 S.E.2d 425, 426 (Ct. App.

National Life Insurance Company ("Jackson National") claimed it could avoid liability because the insured made material misrepresentations about his health history in his policy application. Jackson National did not attempt to rescind the contract, but instead denied recovery based on these alleged misrepresentations. The trial court granted Carroll's motion for summary judgment after Jackson National admitted it could not prove a causal connection between the misrepresentations and the cause of death.[6] In affirming the trial court's decision, the court of appeals held that the supreme court intended its analysis in *Johnson v. South State Insurance Co.*[7] to apply to life insurance questions.[8] However, this reliance proved wrong. Jackson National appealed, and the South Carolina Supreme Court reversed the decision and voided the policy.[9] Justice Toal's opinion couched the issue as "whether an alleged material misrepresentation in the application for life insurance which may render the policy void must be causally connected to the death of the insured."[10] The court reasoned that no such link is required when an insurer successfully proves all five elements of fraudulent misrepresentation stated in *Strickland v. Prudential Insurance Co. of America.*[11] Further, the court interpreted South Carolina Code Section 38-63-220(d) as mandating that an insurance company must challenge an application's veracity within the first two years following the policy's issuance.[12] Finally, the court noted that

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1991), *rev'd*, 307 S.C. 267, 414 S.E.2d 777 (1992); Brief of Appellant at 1.

6. *Carroll*, 304 S.C. at 493, 405 S.E.2d at 426.

7. 288 S.C. 239, 341 S.E.2d 793 (1986).

8. *Carroll*, 304 S.C. at 494-95, 405 S.E.2d at 426-27. *Johnson* concerned property loss sustained under a fire policy issued on a valid application. The court denied recovery for lost contents, but not the dwelling itself, because the insured made fraudulent misrepresentations in the contents claim. The *Johnson* court observed: "Regarding other types of insurance, this Court has consistently held that an insurer must establish a causative link between a policy exclusion and a loss before recovery may be defeated." *Johnson*, 288 S.C. at 241-42, 341 S.E.2d at 794.

9. *Carroll*, 307 S.C. at 267, 414 S.E.2d at 777.

10. *Id.* at 270 n.1, 414 S.E.2d at 778 n.1. *But cf. supra* note 7 and accompanying text (demonstrating the court of appeal's application of *Johnson* to life insurance policies).

11. *Id.* at 270, 414 S.E.2d at 778; *see Strickland*, 278 S.C. 82, 86-87, 292 S.E.2d 301, 304 (1982) ("In order to vitiate a policy on the ground of fraudulent misrepresentation, it is necessary that the insurer show not only the falsity of the statement challenged, but also that the falsity was known to the applicant, was material to the risk, made with the intent to defraud the insurer, and relied upon by the insurer in issuing the policy. This burden must be fulfilled by the insurer by clear and convincing evidence." (citations omitted)). Although this court cites *Strickland* for the test, the courts have applied the same elements consistently since Atlantic Life Ins. Co. v. Beckham, 240 S.C. 450, 126 S.E.2d 342 (1962).

12. *Carroll*, 307 S.C. at 269, 414 S.E.2d at 778. All individual life insurance policy provisions must adhere to the requirements of § 38-63-220. Subsection (d) declares a policy "incontestable as to the truth of the application for insurance and to the representations of the insured individual after they have been in force during the lifetime of the insured for a period of two years from their date of issue. . . . If an insurer institutes proceedings to vacate a policy on the ground of the falsity of the representations contained in the application for the policy, the

unlike some states, South Carolina does not have a statute that requires an insurer to establish a causative link between death and misrepresentation in order to void a life insurance policy.[13] While adopting the majority rule,[14] the South Carolina Supreme Court's decision in *Carroll* amounts to a peek inside Pandora's Box on this issue. At first glance, *Carroll* appears inconsistent with the line of cases beginning in 1932 with *Reynolds v. Life & Casualty Insurance Co.*[15] and culminating in *Johnson v. South State Insurance Co.*.[16] While apparently disparate, the results are indeed reconcilable. *Johnson* and the cases cited therein, regarding causal elements, generally involved property losses.[17] The principal inconsistency lies in the supreme court's change of

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proceedings must commence within the time permitted in this subsection." S.C. CODE ANN. § 38-63-220(d) (Law. Co-op. 1989).

13. *Carroll*, 307 S.C. at 269-70, 414 S.E.2d at 778.

14. *See* 1A JOHN A. APPLEMAN, INSURANCE LAW & PRACTICE § 245, at 125 (1981). For a list of other cases cited by the appellant that hold a causal connection is not required, see Brief of Appellant at 5-7 (citing Martin v. Metropolitan Life Ins. Co., 192 F.2d 167 (5th Cir. 1951) (applying Georgia law); Mutual Life Ins. Co. v. Morairty, 178 F.2d 470 (9th Cir. 1949), *cert. denied*, 339 U.S. 937 (1950) (decided under Arizona law); Malloy v. New York Life Ins. Co., 103 F.2d 439 (1st Cir.) (applying Maine law), *cert. denied*, 308 U.S. 572 (1939); New York Life Ins. Co. v. Simons, 60 F.2d 30 (1st Cir.) (interpreting Massachusetts law), *cert. denied*, 287 U.S. 648 (1932); Tedder v. Union Fidelity Life Ins. Co., 436 F. Supp. 847 (E.D.N.C. 1977) (interpreting North Carolina law); Hofmann v. John Hancock Mut. Life Ins. Co., 400 F. Supp. 827 (D. Md. 1975) (interpreting Maryland law); Southern Farm Bureau Life Ins. Co. v. Cowger, 748 S.W.2d 332 (Ark. 1988); Torbensen v. Family Life Ins. Co., 329 P.2d 596 (Cal. App. 1958); Benson v. Bankers Life & Casualty Co., 362 P.2d 1039 (Colo. 1961); Jones v. Prudential Ins. Co. of America, 388 A.2d 476 (D.C. 1978); Hatch v. Woodmen Accident & Life Co., 409 N.E.2d 540 (Ill. App. Ct. 1980); Bush v. Washington Nat'l Ins. Co., 534 N.E.2d 1139 (Ind. Ct. App. 1989); Pacific Mut. Life Ins. Co. v. Arnold, 90 S.W.2d 44 (Ky. 1935); Radosta v. Prudential Ins. Co. of America, 163 So. 2d 177 (La. Ct. App.), *writ refused*, 165 So.2d 483 (1964); Wickersham v. John Hancock Mut. Life Ins. Co., 318 N.W.2d 456 (Mich. 1982); Howard v. Aid Ass'n for Lutherans, 272 N.W.2d 910 (Minn. 1978); Amoskeag Trust Co. v. Prudential Ins. Co. of America, 185 A. 2 (N.H. 1936); Massachusetts Mut. Life Ins. Co. v. Manzo, 584 A.2d 190 (N.J. 1991); Prudential Ins. Co. of America v. Anaya, 428 P.2d 640 (N.M. 1967); Greene v. United Mut. Life Ins. Co., 238 N.Y.S.2d 809 (N.Y. Sup. Ct. 1963), *aff'd* 258 N.Y.S.2d 323 (N.Y. App. Div. 1965); Shafer v. John Hancock Mut. Life Ins. Co., 189 A.2d 234 (Pa. 1963); Bushfield v. World Mut. Health & Accident Ins. Co., 123 N.W.2d 327 (S.D. 1963); Montgomery v. Reserve Life Ins. Co., 585 S.W.2d 620 (Tenn. Ct. App. 1979); Robinson v. Reliable Life Ins. Co., 554 S.W.2d 231 (Tex. Civ. App. 1977), *aff'd*, 569 S.W.2d 28 (Tex. 1978); Berger v. Minnesota Mut. Life Ins. Co., 723 P.2d 388 (Utah 1986); McAllister v. AVEMCO Ins. Co., 528 A.2d 758 (Vt. 1987); Mutual Benefit Health & Accident Ass'n v. Alley, 187 S.E. 456 (Va. 1936); Yurk v. Prudential Ins. Co. of America, 219 N.W.2d 561 (Wis. 1974)).

15. 166 S.C. 214, 164 S.E. 602 (1932).

16. 288 S.C. 239, 341 S.E.2d 793 (1986).

17. *See* Kerr v. State Farm Fire & Casualty Co., 552 F. Supp. 992 (D.S.C. 1982), *aff'd in part, rev'd in part*, 731 F.2d 227 (4th Cir. 1984) (fire insurance policy); South Carolina Ins. Co. v. Collins, 269 S.C. 282, 237 S.E.2d 358 (1977) (aircraft liability policy); McGee v. Glove Indem. Co., 173 S.C. 380, 175 S.E. 849 (1934) (automobile insurance); Reynolds v. Life &

heart from its opinion in *Johnson* to *Carroll*.[18] Yet, once the *Reynolds* case is factually distinguished, only dicta remains to support the proposition that a causal link necessarily applies to life insurance.

Both the appellant and the supreme court regarded the *Carroll* issue as one of first impression.[19] However, the novelty of the issue may be attributed to Justice Toal's framing the issue differently than that addressed by the court of appeals. Judge Gardner's court of appeals' opinion considered the issue to be "whether a life insurer must prove a causal connection between a misrepresentation pertaining to health history and death before coverage can be voided."[20] On the other hand, Justice Toal may have predetermined the supreme court's result by commenting:

> The Court of Appeals correctly noted ... that this Court held in *Johnson v. South State Insurance Co.* "that an insurer must establish a causative link between a *policy exclusion* and a loss before recovery may be defeated." However, the requirement of a causal connection between an exclusion in a valid policy and the loss is not the issue here. *The issue here is whether an alleged material misrepresentation in the application for life insurance which may render the policy void must be causally connected to the death of the insured.*[21]

Unlike *Reynolds*, *Johnson*, and their kindred, *Carroll* did not focus on policy exclusions or fraudulent claims within the context of a valid policy. Instead, Jackson National sought to void the contract entirely, claiming defects at its inception.

One issue that remains for clarification is the role of the insurance agent when fraud is asserted. As a practical matter, insurance agents often fill out the insurer's application for insurance to reflect the applicant's oral answers. For example, in *Atlantic Life Insurance Co. v. Beckham*[22] evidence showed

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Casualty Ins. Co., 166 S.C. 214, 164 S.E. 602 (1932) (holding that for a life insurance policy containing a provision to avoid liability if the insured dies while violating the law, a causal link must exist between the *violation* and the cause of the death).

18. *See supra* note 8 and accompanying text. The court of appeals was certainly justified in following *Johnson*'s dicta, stating that the causative elements should be applied uniformly when an insurer denies liability based on a claim of fraud or misrepresentation. *Johnson*, 288 S.C. at 241-42, 341 S.E.2d at 794.

19. *Carroll*, 307 S.C. at 269-70, 414 S.E.2d at 778; *see also* Brief of Appellant at 3 (stating South Carolina has never required an insurer to prove a causal connection between a misrepresentation and a death).

20. Carroll v. Jackson Nat'l Life Ins. Co., 304 S.C. 491, 492, 405 S.E.2d 425, 426 (Ct. App. 1991), *rev'd*, 307 S.C. 270, 414 S.E.2d 777 (1992).

21. *Carroll*, 307 S.C. at 270 n.1, 414 S.E.2d at 778 n.1 (emphasis added) (citations omitted) (quoting Johnson v. South State Ins. Co., 288 S.C. 239, 341 S.E.2d 793 (1986)).

22. 240 S.C. 450, 126 S.E.2d 342 (1962).

that the insurer's agent persuaded Beckham to apply for a policy and that another agent, a doctor doubling as Beckham's family physician, actually filled out the application.[23] In *Carroll* the court of appeals advocated a second part to the *Strickland* test to be applied when an insurance agent's actions are questionable.[24] In addition to the *Strickland* elements, the court of appeals stated that "misrepresentations can be waived by negligence or fraud on the part of the agent of an insurance company unless the policy itself has contrary provisions."[25] Typically, absent collusion by the insured, fraudulent misrepresentations by the insurer's agent are chargeable to the insurer, not the insured.[26]

The possibility of fraud by the insurance agent raises a larger evidentiary question. The court of appeals alluded to the problem of defending against a charge of fraud after the alleged defrauder is dead and cited *Small v. Coastal States Life Insurance Co.*[27] for the rule that a policy should not be forfeited after the event creating liability.[28] *Small* involved a claim under health insurance policies, in which the insurer alleged that the claimant misrepresented his health in the application. The *Small* court found that misrepresentations made in good faith without an intent to deceive would not serve as grounds for policy avoidance.[29] Further, and more importantly, the *Small* court stated that "if an insurance company, at the inception of the contract of insurance, has knowledge of facts which render the policy *void at its option*, and the company delivers the policy as a valid policy, it is estopped to assert such ground of forfeiture."[30] With a causation requirement, misrepresentations not linked to the cause of death are of little consequence.[31] Under the *Strickland* test, a misrepresentation must be "made with the intent to defraud

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23. *Id.* at 457, 126 S.E.2d at 344-345.

24. *See Carroll*, 304 S.C. at 494, 405 S.E.2d at 427.

25. *Id.* (citing Berry v. Virginia State Am. Co., 83 S.C. 13, 64 S.E. 859 (1909)); *see also* Atlantic Life Ins. Co. v. Beckham, 240 S.C. at 456, 126 S.E.2d at 344 (finding issuance of a policy upon incomplete or unanswered questions on an application waives any objections thereto).

26. *See generally* B. H. Glenn, Annotation, *Insured's Responsibility for False Answers Inserted by Insurer's Agent in Application Following Correct Answers by Insured, or Incorrect Answers Suggested by Agent*, 26 A.L.R.3D 6 (1969); *see also* Small v. Coastal States Life Ins. Co., 241 S.C. 344, 128 S.E.2d 175 (1962) (holding insurer liable for agent's knowledge of the insured's previous medical history in spite of the insured's possible misrepresentations).

27. 241 S.C. 344, 128 S.E.2d 175 (1962).

28. *See Carroll*, 304 S.C. at 494, 405 S.E.2d at 427 (citing Small v. Coastal Life Ins. Co., 241 S.C. 244, 128 S.E.2d 175 (1962)).

29. Small v. Coastal Life Ins. Co., 241 S.C. 344, 348, 128 S.E.2d 175, 178 (1962).

30. *Id.* (emphasis added) (quoting Fludd v. Equitable Life Assurance Soc'y, 75 S.C. 315, 55 S.E. 762 (1906) (allowing parol evidence to establish the knowledge of the agent on grounds that such is allowable to refute an allegation of fraud)).

31. With or without a causation requirement, alleged misrepresentations must still pass muster under the five-element *Strickland* test before they become "significant." *See supra* note 11 and accompanying text.

the insurer" and with its "falsity ... known to the applicant."[32] However, in life insurance matters, the insurance carrier must establish these elements without the testimony of the claimant because of the "Dead Man's" Statute.[33] The "Dead Man's" Statute states:

> [N]o party to an action or proceeding, no person who has a legal or equitable interest which may be affected by the event of the action or proceeding ... shall be examined in regard to any transaction or communication between such witness and a person at the time of such examination deceased ... when such examination or any judgment or determination in such action or proceeding can in any manner affect the interest of such witness or the interest previously owned or represented by him.[34]

Therefore, proof of intent and known falsity becomes difficult at best,[35] and perhaps even more troubling when a question arises as to whether the decedent actually filled out the application.[36]

Unlike other states' laws that have no causation requirement, South Carolina considers the rights of the parties open to dispute even after death.[37] In *Carroll* the South Carolina Supreme Court interpreted section 38-63-220(d) to allow an insurer to challenge the truthfulness of the applicant's answers "during the first two years of the policy."[38] While the statute's purpose is

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32. Strickland v. Prudential Life Ins. Co. of America, 278 S.C. 82, 86, 292 S.E.2d 301, 304 (1982). Good faith misrepresentations are necessarily excluded.

33. S.C. CODE ANN. § 19-11-20 (Law. Co-op. 1985).

34. *Id.*

35. Consider S.C. CODE ANN. § 19-11-70 (Law. Co-op. 1985), which states:

> In any proceeding in any of the courts of this State in which any transaction shall be impeached for fraud by . . . any . . . person interested in establishing such fraud the survivor or survivors of the parties to such alleged fraud, when one or more of such parties shall be dead, shall be competent and compellable to testify in behalf of such . . . person interested in establishing such fraud, any law, rule or usage to the contrary notwithstanding. But nothing herein shall render such survivor or survivors competent to testify in relation to such transaction in their own behalf in any proceeding instituted by him or them. . . .

Id.; *see also* Clarke v. Home Fund Life Ins. Co., 79 S.C. 494, 61 S.E. 80 (1908) (insurer's agent not allowed to testify concerning a parol agreement with decedent). *But see Strickland*, 278 S.C. at 84, 292 S.E.2d at 302 (noting that the decedent was unaware that he had terminal cancer when he made a life insurance contract, but beneficiaries were allowed to recover on the policies).

36. *See supra* text accompanying notes 22-23; *see also* Carroll v. Jackson Nat'l Life Ins. Co., 304 S.C. 491, 494, 405 S.E.2d 425, 427 (Ct. App. 1991), *rev'd*, 307 S.C. 267, 414 S.E.2d 777 (1992) (discussing the evidentiary difficulties of proof after the insured dies).

37. *See Carroll*, 307 S.C. at 269-70, 414 S.E.2d at 778.

38. *Id.* at 269, 414 S.E.2d at 778. For a list of provisions required in life insurance policies issued within the state, see S.C. CODE ANN. § 38-63-220(d) (Law. Co-op. 1989).

to provide a two year window for an insurer to contest an application, this interpretation runs contrary to the actual statutory language used by the South Carolina General Assembly.[39] A reasonable reading of the statute reveals that the contestability period remains effective so long as the insured remains alive.[40] Indeed, the court of appeals adopted this position by holding:

> [S]ection [38-63-220] provides, in effect, that if an insurer institutes proceedings to vacate a policy on the grounds of misrepresentations contained in the policy application, *the proceedings must commence during the lifetime of the insured and within a period of two years from the date of the issue of the policy*. Even if this section applies only to offensive actions (such as a complaint seeking recision) and not to defensive actions such as the avoidance pleaded in this case, the statute, nevertheless, clearly indicates the legislative intent that policies should not be forfeited if the insurer attempts to void a policy after the death of the insured.[41]

Other states not requiring a causal link adopt this stance. For example, in *Terry v. New York Life Insurance Co.*[42] the Eighth Circuit Court of Appeals applied Missouri law and held that the rights and obligations of the parties at the insured's death were "'fixed and absolute . . . [and that] . . . the sums insured become a purely legal demand giving the parties the right to have the issue tried by a jury'".[43]

The previously discussed precedent indicates a possibility that the supreme court adopted a rather harsh rule favoring insurance companies. However, the supreme court could have adopted a more stringent rule. In *Ratliff v. Coastal Plain Life Insurance Co.*[44] the South Carolina Supreme Court interpreted North Carolina law. Following a determination by the trial court that misrepresentations in an insurance application made the policy voidable under North Carolina law, the court stated:

> "[I]n an application for a policy of life insurance, written questions relating to health and written answers thereto are deemed *material as a matter of*

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39. *See* S.C. CODE ANN. § 38-63-220(d) (Law. Co-op. 1989) (stating that policy and benefits "are incontestable as to the truth of the application ... and to the representations of the insured individual *after they have been in force during the lifetime of the insured for a period of two years from their date of issue.*) (emphasis added).

40. *Id.*

41. Carroll v. Jackson Nat'l Life Ins. Co., 304 S.C. 491, 495, 405 S.E.2d 425, 427 (Ct. App. 1991) (emphasis added), *rev'd*, 307 S.C. 267, 414 S.E.2d 777 (1992).

42. 104 F.2d 498 (8th Cir. 1939).

43. *Id.* at 501 (quoting Wollums v. Mutual Benefit Health & Accident Ass'n, 46 S.W.2d 259 (Mo. 1931)). In Missouri, no equitable action may be brought to cancel a policy after the insured's death. *Id.* Such an action is, of course, permitted while the insured is still alive. *Id.*

44. 270 S.C. 373, 242 S.E.2d 424 (1978).

> *law*. The inquiry for the jury is whether or not insured made the statement and whether or not it was false. If insured made the statement and if it was false, the question as to whether it was fraudulently, knowingly or innocently made *is of no importance*. The statement in either case is material as a matter of law, and the policy will be avoided."[45]

The South Carolina Supreme Court correctly joined the majority of states in redirecting state law away from a causation requirement. While the court's opinion could have been more elaborate, the result accomplished is more equitable than the previous rule. As the appellant's brief suggested, a causation requirement rewards the unscrupulous and punishes the honest.[46] Further, unlike the earlier property insurance policy cases, a life insurance policy contains nothing to sever in the event of fraud in either the application or the claim, but not both.[47] However, causal links may not be long removed from South Carolina's life insurance jurisprudence. Noting that states requiring a causal connection have done so by legislative fiat,[48] the South Carolina Supreme Court invited the General Assembly to do the same.

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45. *Id.* at 377, 242 S.E.2d at 425 (second emphasis added) (citations omitted) (quoting Rhinehardt v. North Carolina Mutual Life Ins. Co., 119 S.E.2d 614, 616 (N.C. 1961)). The court tempered the harshness of this rule by agreeing to consider statements regarding "temporary indispositions" or questions necessarily answered by an opinion as nonmaterial. *Id.* at 377, 242 S.E.2d at 425-26. *But see, e.g.*, Berger v. Minnesota Mut. Life Ins. Co., 723 P.2d 388 (Utah 1986) (determining materiality of a misrepresentation by the extent to which it initially influenced insurer to assume risk, measured at the time risk is assumed, and by the probable and reasonable effect that truthful disclosure would have had upon insurer in assessing the advantages of the proposed contract).

46. *See* Brief of Appellant at 7-8. The appellant argued that the causation element was counter intuitive because it encouraged those with reason to misrepresent their health histories to do so. *Id.* Such persons would gamble that they would survive the two year contestability period or that the insurance company would not be able to establish conclusively a link between their death and perfidy. On the other hand, those who fully disclosed their health histories ran the risk of higher premiums or outright denial of a policy. *See id.*

47. *See supra* note 17 and accompanying text.

48. *See* Carroll v. Jackson Nat'l Life Ins. Co., 307 S.C. 267, 270, 414 S.E.2d 777, 778 (1992) (citing KAN. STAT. ANN. § 40-418 (1986); MO. REV. STAT § 376.580 (1991); R.I. GEN. LAWS § 27-4-10 (1989)). The statutes cited by the court are almost uniform in their language. These statutes declare that no misrepresentation is material, and no policy is voidable, unless it actually contributes to the contingency or event upon which the policy becomes due or payable.